Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration Of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals With Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

REPLY COMMENTS OF METROCALL HOLDINGS, INC.

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SUMMARY

The further comments in this proceeding emphasize that revenue-based mechanisms remain the most equitable, administratively convenient means of assessing USF contributions. The interim mechanism, by relying on projected, collected revenues, should eliminate the problems experienced by carriers with declining customer bases, and it should be retained.

The commenters point out serious flaws in each of the three connection-based proposals in the *Second FNPRM*. Each of those proposals will have a discriminatory impact on one or more sectors of the telecommunications industry, and each will unlawfully shift much of the burden of sustaining the federal USF to intrastate services.

The discriminatory impact of all three proposals can be most clearly observed in their impact on paging services. Although both one and two-way paging use very little time or capacity on the public switched network, each proposal would require significantly increased contributions from paging carriers that are completely disproportionate to the benefit they receive from the network. Paging carriers are faced with declining subscribership and revenues, and many of the paging subscribers that remain, including many public health and safety entities, require the low-cost alternative that paging provides. Neither these subscribers nor the paging carriers who serve them can afford to absorb ever-increasing governmental fees to subsidize higher-capacity, higher-usage services that generate far greater revenue. It is inequitable and discriminatory to impose such disproportionate burdens on paging carriers and their customers.

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REPLY COMMENTS OF METROCALL HOLDINGS, INC.

Metrocall Holdings, Inc. ("Metrocall"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R § 1.415 , hereby submits its reply comments in response to the *Second FNPRM*[1] in the above-captioned proceeding. In support hereof, the following is respectfully shown:

[1] *Report and Order and Second Further Notice of Proposed Rulemaking;* FCC 02-329 (released December 13, 2002). Metrocall previously filed comments in this proceeding.

I. Retaining the Revised Revenue-Based Mechanism is Supported by the Record.

The further solicitation of comments in this proceeding has not changed the ultimate fact; the weight of evidence in the record supports the retention of a revenue-based contribution mechanism for the Universal Service Fund ("USF"), as revised by the interim rules. *See, e.g.*, Comments of Arch Wireless Operating Company ("Arch Comments") at 4-5; Comments of Concerned Paging Carrier ("CPC Comments") at 15-18; Comments of Fred Williamson & Associates on Staff Study ("FW&A Comments") at 3-5; Comments of ITA at 2; Comments of Rainbow/PUSH Coalition ("Rainbow/PUSH Comments") at 1-2; Comments of Telecommunications Research & Action Center ("TRAC Comments") at 1-2; Comments of Cellular Telecommunications and Internet Association ("CTIA Comments") at 2; Comments of Consumer Union, *et al.* ("CU Comments") at 4.

Some commenters who are not necessarily adverse to some form of connection-based methodology nonetheless observe that there is too little information in the current record from which to assess whether any of the mechanisms proposed in the *Second FNPRM* will be any improvement over the revenue-based model. *See, e.g.*, Comments of Public Service Commission of the State of Missouri ("MO PSC Comments") at 5-7; Comments of Western Alliance ("Western Alliance Comments") at 6-7; Comments of Virgin Mobile USA, LLC ("Virgin Mobile Comments") at 2.

As noted by several commenters, the Commission's interim rules, which have only recently taken effect, address the inequities inherent in reporting based on past revenues. *See* CTIA Comments at 2; Virgin Mobile Comments at 4-5; Comments of j2 Global Communications ("j2 Comments") at 5; Comments of Montana Independent

Telecommunications Systems at 6. The record does not contain sufficient evidence to abandon the revised revenue based approach in favor of an untried connection-based methodology. *See* j2 Comments at 5. Moreover, there are costs to carriers in changing from the prior revenue-based mechanism to the current one, and there will be costs associated with changing billing systems, training staff, and the like if any connection-based mechanism is adopted. *See* Comments of Allied National Paging Association ("Allied Comments") at 11.

The Commission should not impose these major administrative costs on carriers in rapid succession without a compelling reason to do so. Indeed, even if administrative costs can no longer be recovered in USF line items, carriers will still need to cover these significant costs in some manner, whether through general rate increases or by cutting costs elsewhere, for example, by postponing network upgrades or improvements or the implementation of new services. Under any of those options, consumers will bear the ultimate costs of a premature, ill-advised change in the contribution mechanism.

II. None of the Connection-Based Proposals are Equitable, Non-Discriminatory, or Justified by the Record.

There is not a single connection-based proposal in the *Second FNPRM* for which commenters do not note serious flaws – even commenters who themselves support some form of capacity-based contribution mechanism. Even without considering the peculiarly onerous and discriminatory impact of the proposals on paging and messaging carriers, the record shows that each of these proposals discriminates among the various classes of carriers, disproportionately burdening some carriers to subsidize others. Moreover, the USF, historically and under Section 254, was intended to subsidize certain local telecommunications from intrastate revenues; the shifting of contribution liability that would result from the *Second FNPRM*'s proposals will act as a subsidy flowing in the *opposite* direction - services which may be used largely or entirely for intrastate communications will pay a disproportionate percentage of the federal USF. In addition, Western Alliance thoughtfully questions whether any of the proposed connection-based models are truly sustainable. *See* Western Alliance Comments at 18-23.

The first proposal, a flat per connection fee plus a minimum mandatory requirement, is wholly unrelated to the amount of interstate telecommunications the payor actually provides.[2] *See, e.g.*, Allied Comments at 3; Arch Comments at 8. The assessment of USF contributions in a manner that requires the intrastate portion of the affected services to subsidize the federal program is unlawful. *See Texas Office of Public Utility Council v. FCC*, 183 F3d 393, 447 (5th Cir. 1999). Moreover, the first proposal still dramatically undercharges the largest providers of interstate telecommunications services – the IXCs. *See, e.g.*, Joint Comments of SBC Communications Inc. and Bellsouth Corporation ("SBC and BellSouth Comments") at 15-16. Requiring carriers with less interstate usage to subsidize those carriers with the highest interstate usage violates Section 254(d)'s command that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute on an equitable and nondiscriminatory basis" to the USF. 47 USC § 254(d).

Additionally, the first proposal presents a double-payment issue by assessing both facilities-based and reseller "connections," so that the same connection is assessed twice. That approach will discriminate against resellers by requiring them either to absorb or bill through to their customers the equivalent of two USF charges (their own, and the amount

[2] *See, e.g.* Verizon Wireless Comments at 9.

recovered from them by their underlying carriers). *See*, *e.g.*, SBC and BellSouth Comments at 16.

The second proposal, assessing fees on access and transport, similarly lacks any rational nexus to actual interstate activity. *See, e.g.*, Verizon Wireless Comments at 12-13. For example, because CMRS telephony provides both access and transport components, those carriers will be assessed twice, even though actual interstate usage may be negligible or non-existent. *See, e.g., id*. at 14-16. Additionally, this proposal presents such administrative complexities that it is questionable whether it could be successfully implemented. *See, e.g.*, *id.* at 17-18.

Like the others, the third proposal, which would base USF contributions on "activated" telephone numbers with a capacity-based charge, assesses interstate USF contributions without any relation to actual interstate usage, and will result in many wholly intrastate calls being taxed to subsidize the federal USF. *See* Allied Comments at 4, 9-10; *cf.*, Comments of Small Business Association at 5 (stating that many small businesses have telephone lines that are not connected to long distance networks).

Additionally, as SBC and BellSouth note, not all interstate telecommunications providers submit Numbering Resource Utilization/Forecast ("NRUF") reports, there is little consistency even among the entities that do file the NRUF reports, and there is generally no way to determine what type of connection is associated with a particular number. *See*, SBC and BellSouth Comments at 19-22; *see also* Allied Comments at 15. Consequently, enforcement of this mechanism would be exceedingly difficult; the drain on the Commission's resources to police providers' accurate reporting of their activated numbers would be considerable, yet the Commission would have no choice but to expend those resources if it hopes to maintain the sustainability of the USF under this approach.

III. The Capacity-Based Proposals are Particularly Inequitable and Discriminatory as Applied to Paging Carriers.

The disparate burdens that the proposed connection-based approaches would place on certain segments of the industry are amply demonstrated by their effects on paging carriers. The comments clearly demonstrate that all of the proposals in the *Second FNPRM* are not "equitable and nondiscriminatory" in their impact on messaging carriers. The Wireline Competition Bureau's Staff Study provides nothing to contradict that record evidence; it appears that the staff has relied upon the assumptions that overstate the amount of paging revenue per unit and the percentage of that revenue that is interstate. *See* Comments of American Association of Paging Carriers at 3-4. The Staff Study also apparently uses a contribution factor to determine each industry segment's contributions during 2002 that exceeds the actual average contribution factor for the year. *Id.* at 4.

The average paging carrier's current USF contribution is approximately $0.07 per unit, and in light of the usage patterns of many paging customers, even that figure may overestimate many small to mid-sized paging carriers' interstate activity. *See, e.g.*, CPC Comments at 9-12. Under the first proposal, that cost per unit will increase from $0.07 to $0.10 for one-way pagers and to $0.20 for two-way units, during a time when messaging subscribership and revenues are in sharp decline. *See, e.g.*, Arch Comments at 2-3; CPC Comments at 12-14; Allied Comments at 8. An additional $0.03 per one-way unit may seem small, but small increases are not insignificant to customers used to an average bill of only $8.00 per month.[3]

Moreover, many paging subscribers are public safety, health care and law enforcement entities, low income consumers, and other entities that require reliable telecommunications services at low rates. For example, Metrocall provides services to some 700 hospitals and health care facilities throughout the U.S. Many of those customers are governmental or private not-for-profit entities, which have little flexibility in their budgets to absorb increased pass-throughs of taxes and fees. Those units are also rarely used for interstate services; Metrocall's hospital customers use its services primarily for critical communications within individual buildings or campuses, or to reach physicians on call in the surrounding areas. Limited budget flexibility and localized service areas are also the rule for the law enforcement personnel, fire departments, and other public safety organizations that utilize Metrocall's services.

Customers of this kind can ill-afford service cost increases in excess of 40%; but paging carriers, participants in the most competitive sector in the telecommunications industry and facing intermodal competition from broadband providers, simply do not have sufficient profit margins to keep absorbing ever-growing government-imposed costs. Perhaps the proposed leap in paging carrier contributions would be justified if this industry sector made more usage of, or imposed greater burdens on, the public switched telephone network than carriers in other sectors; however, as the record demonstrates,

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[3] Nor is a higher universal service fee the only item that will need to be added to those customers' charges, whether by line item or bundled in the rates; paging carriers pay, and must somehow recover the costs of most of the same federal and state taxes and fees that more lucrative telecommunications carriers, with greater network capacity, are assessed.

paging carriers use far less network capacity, and for far shorter periods of time per message, than any other carriers. *See, e.g.,* Arch Comments at 6.

The second proposal is even more inequitable; it would treat a one-way paging connection as the equivalent of half of a wireline voice access connection and two-way paging as a full wireline voice access connection – even though those figures are entirely unrelated to the actual amount of capacity of one and two-way messaging units. *See, e.g.*, Arch *ex parte* letter (filed September 19, 2002) ("*Arch September Ex Parte*") Arch Comments at 6. The treatment of two-way paging as a full "access connection" is particularly misplaced; even two-way paging services are in no way equivalent to other telecommunications services with respect to the amount of or capacity they use on the telephone network. The use of the public switched network made by a telephone caller sending a message to a two-way messaging unit is identical to that involved in sending a standard, one-way alphanumeric page; the caller can only enter a number or leave message. The recipient cannot respond to the calling number using his or her two-way paging unit; there is no open, two-way communication path. When the device is used for two-way messaging, the two-way subscriber will be communicating with either another two-way messaging device or an e-mail address. The typical routing of those respective types of messages will occur solely over wireless messaging networks (if both parties are customers of the same two-way paging carrier, the communications will occur exclusively on that carrier's network, with no interconnection to any other carrier), or between the two-way paging network and an Internet backbone provider's network. In light of the extremely limited usage that both one and two-way paging make of the public switched network, neither form of messaging is equivalent to half an "access connection," let alone a full connection. The second proposal would impose an even greater burden on paging carriers than the first, again with no relation to the benefit those carriers obtain from connection to the interstate network.

The actual cost of the third proposal, basing USF contributions on activated numbers, is difficult to discern; neither the *Second FNPRM* nor the Staff Study is terribly clear on the treatment of a number assigned to a one or two-way paging unit as compared to a number assigned to any other telecommunications service. The criticisms of the first two proposals are equally applicable in this regard; one and two-way paging do not provide the same connectivity and capacity as other telecommunications services, nor do they make equivalent use of the PSTN. Put differently, not all numbers are created equal, and the associated telecommunications services may vary greatly with regard to interstate usage, capacity, and ability to generate revenue. Since there is generally no reliable means to confirm the telecommunications service to which a particular number is assigned, it would be difficult to determine with any accuracy the amount that a particular number should be assessed. *See* SBC and BellSouth Comments at 21-22. It would therefore seem that the third proposal will either result in imposing disproportionate payment obligations on low-capacity, low-usage services like paging,[4] or, if some attempt is made to cure this inequity by adopting equivalency ratios, in excessive susceptibility to gaming by carriers and undue burdens on USAC and the Commission's enforcement staff.

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[4] As explained in the discussion of the second proposal, two-way pagers use assigned telephone numbers in the same manner as one-way pagers do; a telephone caller dials the device's number to send a return number or other message to the device, and the paging subscriber must use a wireline or wireless telephone to contact the calling party's telephone number. For two-way messaging, an e-mail address, PIN number, or vanity name or alias is used, rather than a telephone number. Even for two-way messaging, then, the mere assignment of a phone number to a device bears no relation to the device's interstate usage of the public switched network.

CONCLUSION

For all the foregoing reasons, and for the reasons stated in its Comments, Metrocall respectfully submits that there is insufficient support in the record for replacing the revenue-based Universal Service contribution mechanism, as revised, with any contribution-based mechanism at this time. Not one of the three specific proposed contribution-based mechanisms in the *Second FNPRM* has broad support in the record. Each contains serious flaws which would render it inequitable and discriminatory by burdening certain classes of carriers without regard to the amount of their provision of interstate services or usage of the interstate network. Additionally, each of the three proposals shifts, or is likely to shift, the payment burden for the interstate USF to particular classes of carriers in a manner that unlawfully encroaches upon intrastate services and revenues.

Moreover, under any contribution mechanism, there is no justification in the record for any increase in the amount of contributions by paging carriers, and certainly no justification for increases in excess of 40% (and likely more) of paging carriers' current contributions. Metrocall therefore respectfully requests that the Commission codify and maintain the "interim" revenue-based mechanism.

Respectfully submitted,

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